

Department of Education

3452.227-70

(End of clause)

3452.216-71 Negotiated overhead rates—fixed.

Insert the following clause in cost-reimbursement contracts as prescribed in 3416.701:

NEGOTIATED OVERHEAD RATES—FIXED (AUG 1987)

(a) Notwithstanding the provisions of the clause entitled "Allowable Cost and Payment", the allowable indirect costs under this contract shall be obtained by applying negotiated fixed overhead rates for the applicable period(s) to bases agreed upon by the parties, as specified below. A negotiated fixed rate(s) is based on an estimate of the costs which will be incurred during the period for which the rate(s) applies. If the application of the negotiated fixed rates(s) against the actual bases during a given fiscal period produces an amount greater or less than the indirect costs determined for that period, the greater or lesser amount(s) will be carried forward to a subsequent period.

(b) The contractor, as soon as possible but no later than six months after the close of its fiscal year, or such other period as may be specified in the contract, shall submit to the contracting officer or the duly authorized representative, with a copy to the cognizant audit activity, a proposed fixed overhead rate or rates based on the contractor's actual cost experience during the fiscal year, including adjustment, if any, for amounts carried forward, together with supporting cost data. Negotiation of fixed overhead rates, including carry-forward adjustments, if any, by the contractor and the contracting officer, or the duly authorized representative, shall be undertaken as promptly as practicable after receipt of the contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (1) the agreed fixed overhead rates, (2) the bases to which the rates apply, (3) the fiscal year, unless the parties agreed to a different period, for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of fixed overhead rates for any fiscal year or different period agreed to by the parties, the contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the contracting officer, subject to appropriate adjustment

when the final rates for the fiscal year or other period are established.

(f) Any failure of the parties to agree on any fixed rate or rates or to the amount of any carry-forward adjustment under this clause shall not be considered a dispute for decision by the contracting officer within the meaning of the Disputes clause of this contract. If for any fiscal year or other period specified in the contract, the parties fail to agree to a fixed overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates, in accordance with the terms of the Allowable Cost and Payment clause, in effect on the date of this contract.

(g) Submission of proposed fixed, provisional, and/or final overhead rates, together with appropriate data in support thereof, to the contracting officer or the duly authorized representative and agreements on fixed, provisional, and/or final overhead rates entered into between the contractor and the contracting officer or the duly authorized representative, as evidenced by negotiated overhead rate agreements signed by both parties, shall satisfy the requirements of paragraphs (b), (c), (d), and (e) of this clause.

(End of clause)

3452.227-70 Publication and publicity.

As prescribed in 3427.470, insert the following clause in all solicitations and contracts other than purchase orders:

PUBLICATION AND PUBLICITY (AUG 1987)

(a) Unless otherwise specified in this contract, the contractor is encouraged to publish and otherwise promote the results of its work under this contract. A copy of each article or work submitted by the contractor for publication shall be promptly sent to the Contracting Officer's Technical Representative. The contractor shall also inform the representative when the article or work is published and furnish a copy in the published form.

(b) The contractor shall acknowledge the support of the Department of Education in publicizing the work under this contract in any medium. This acknowledgment shall read substantially as follows:

"This project has been funded at least in part with Federal funds from the U.S. Department of Education under contract number _____. The content of this publication does not necessarily reflect the views or policies of the U.S. Department of Education nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."